(6)

No. 02-609

Supreme Court U.S.
FILED
DEC 17 2002
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In THE

Supreme Court of the United States

ERIC RINGSRED, an individual,

Petitioner,

vs.

(1) **CITY OF DULUTH**, a municipal corporation; and the following City officials individually and in their official capacities: (2) Gary L. Doty, Mayor; (3) Cynthia Albright, Assistant City Attorney; (4) Brian Brown, City Attorney; (5) Robert Asleson, Assistant City Attorney; (6) John Schweiger, Special Projects Manager; (7) John Smedberg, Assistant City Attorney (8) **DULUTH ECONOMIC DEVELOPMENT AUTHORITY**, and its Director, Cynthia Albright, individually and in her official capacity; (9) **TEAM DULUTH**; (10) **SOFT CENTER-DULUTH, INC.**; (11) Michael McNamara; (12) **THE DULUTH AREA CHAMBER OF COMMERCE**, and (13) its CEO David Ross,

Respondents.

✦

On Petition For Writ of Certiorari To The United States Court of Appeals For The Eighth Circuit

REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION

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6 pp

I.
Petitioner's Constitutional Claims

Respondents skillfully argue, that Petitioner has misinterpreted the exact meaning and breadth of the lower court's decision . One of them, the City of Duluth, has actually re-formed Petitioner's question, in page i of its Brief in Opposition.

But even under the narrowest possible reading of the lower court's decision, this much is quite clear: The Court held that citizens like E. Ringsred have no constitutional rights of due process, nor free access to court, when litigating environmental issues under M.S. 116B and 116D.

Even this narrow interpretation of the lower court holding is worthy of Supreme Court review. . . for it means that local government may harass, intimidate, retaliate and ignore lawful procedures, as Ringsred alleges, when challenged by a citizen under these Minnesota statutes.

Respondents argue in their briefs, as if it would somehow justify the lower court's ruling, that it really does not apply to other types of "public interest" litigation.

Nothing expressed in the lower court's holding so limits it, to only these two Minnesota Statutes.[1]

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[1]Note a difference between MERA and MEPA: Under MERA a person requests relief "in the name of the state of Minnesota" (M.S. 116B.03, Apx. pp. 57), but under MEPA persons sue for relief on their own behalf (M.S. 1116D.04, subd. 11, Apx. p. 79). Ringsred sued the City under both (*see* Apx. pp. 8-9)..

To the contrary, the lower court opinion does not draw a line of demarcation between litigation under M.S. 116B or 116D, as opposed to all other state laws. Rather, it draws the line for constitutional protection between litigants pursuing personal interests versus those representing broad public interests.

"Representational interests", as "shared by every citizen of the state," are the exact words of the lower court in defining litigation which is not constitutionally protected (Apx. pp. 23 and 24):

> [A]ny property, or liberty interest held by Ringsred, in prosecuting that case, was of a type shared by every citizen of the State of Minnesota, in whose stead he litigated the case.
>
> * * *
>
> The Plaintiffs' claimed denial of access to the Courts can fair no better, as the interests that Ringsred was pursuing in these State Courts were representational interests, and not those he had a right to litigate in his own stead.

Under this legal precept, coined by the lower court as "a matter of first impression," it is clear that many other activities would be stripped of constitutional protection, such as taxpayers suing to protect the public treasury as allowed under many states' laws, or petitioning for a referendum to enact or repeal general legislation.

Whether broadly or narrowly construed, this lower court ruling strikes at the heart of the First and Fourteenth Amendments, and is worthy of Supreme Court review.

II.

Respondents Raise the Issue of Jurisdiction Over the Subject Matter, Under the *Rooker-Feldman* Doctrine

This is an important federal question of broad applicability: **Does the Federal Court have any jurisdiction to rule as it did, upon Petitioner's constitutional issue, after the same Court itself had determined it lacked jurisdiction over the subject matter, by reason of the *Rooker-Feldman* Doctrine?**

The answer would seem obvious: **The lower court may not rule where it does not possess the requisite jurisdiction.**

But it did rule. The federal judiciary in this case, a magistrate, district court judge and three appeals judges unanimously rejected this fundamental jurisdictional question, which was specifically raised in Petitioner's Appeal to the Eighth Circuit as Issue No. 1 (Case 02-1242 Appellant's Opening Brief filed 3/14/02, pp. 9, 10).

The fundamental nature of this jurisdictional issue, its unanimous rejection by the lower court judges, and the certainty that it will recur – all make this an important question for Supreme Court review and correction.

In the specifics of this case, the District and Eighth Circuit courts have ruled that Ringsred's constitutional claims conflicted with a prior state court judgment, thus depriving the Federal Court of subject matter jurisdiction under the *Rooker-Feldman* Doctrine.

The relevant facts are few and simple: a single page "conclusion" written by the State Court itself settles the *Rooker-Feldman* issue.

Directly addressing Petitioner's allegations of municipal wrongdoing (in a motion for contempt) the State Court takes a neutral position and suggests Ringsred seek "separate proceedings" to resolve those allegations. (Apx. pp. 87-8.) That is exactly what Petitioner has done.

The important and definitive single page "conclusion" by the State Court states:

> In reviewing Plaintiff's allegations the Court does not mean to suggest it has determined any of them to be valid or invalid.
>
> * * *
>
> Many of the issues which Plaintiff raises could well be the subject of separate proceedings subject to the rights and responsibilities of the parties under our Rules of Procedure including those applicable to discovery.

Respondents and the lower court engage a detailed, wide ranging, mostly irrelevant factual analysis which ignores and contradicts the State Court's position, articulated above, in the only instance where allegations of city wrongdoing were brought before it.

However as discussed earlier, if *Rooker-Feldman* indeed does apply as Respondents argue, the Federal Courts have no jurisdiction over the subject matter constitutional claims. The Federal Court should not have issued an advisory opinion on its "matter of first impression."

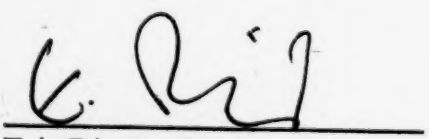
Worse yet, the District Court dismissed Ringsred's federal claim **with prejudice**, the meaning of which is totally unclear because Rule 41(b) states that dismissals for lack of jurisdiction do not operate as an adjudication on the merits.

Both the holding on the subject matter and the dismissal "with prejudice" by the Federal Court is certain to wreak confusion when Petitioner brings this case back to the Minnesota state courts – which he is entitled to do, as there is no preclusion under Federal or Minnesota law against bringing a prior suit which was dismissed on jurisdictional grounds – *See Costello v. United States*, 365 U.S. 265, 81 S.Ct. 534 (1961); and also *G.A.W. v. D.M.W.*, 596 N.W. 2d 284, 287 (Minn. App. 1999) which reiterates that both *res judicata* and collateral estoppel require a final judgment on the merits.

In the current posture of this case, the Supreme Court must either gain jurisdiction of the subject matter constitutional issue by reversing the lower court's invocation of the *Rooker-Feldman* Doctrine, which it may review *de novo*; or in the alternative, vacate the lower court decision on the subject matter for lack of jurisdiction.

Either way, the lower court's decision must fall.

Dated December 16, 2002



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